

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

In the Bankruptcy Matter of:

Otto L. Solorzano

Debtor

Amos Financial, LLC

Plaintiff

v.

JPMorgan Chase Bank, NA

Defendant

Bankruptcy No. 19-25082  
Judge A. Benjamin Goldgar  
Chapter: 13

Adversary No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**

NOW COMES Amos Financial, LLC (hereinafter “Amos”), through its attorneys, The Weininger Law Firm, LLC, for its Complaint for Declaratory Judgment, states as follows:

**JURISDICTION**

1. This is an adversary proceeding brought pursuant Rule 7001 of the Federal Rules of Bankruptcy Procedure.
2. This Court has jurisdiction over this complaint pursuant to 28 U.S.C. §1334.
3. This adversary proceeding is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B), (K) & (L).
4. Venue is proper under 29 U.S.C. § 1409.

**PARTIES**

5. Amos Financial, LLC is an Illinois limited liability company having a principal place of business in Highland Park, Illinois.

6. JPMorgan Chase Bank is a National Banking Association with a principal place of business in New York, New York.

**FACTUAL BACKGROUND**

7. Debtor filed his petition under Chapter 13 of Title 11, United States Code, on September 4, 2019 (the “Bankruptcy Case”).
8. Debtor’s Schedule A/B states that he owns real property located at 108 Anne Court, Vernon Hills, IL, which is Debtor’s primary residence (the “Property”).
9. Schedule A/B states that the Property is valued at \$222,000.00.
10. Debtor’s Schedule D states that JPMorgan has a claim in the amount of \$225,000.00, of which \$222,000 is a secured claim on the Property (the “JPMorgan Claim”).
11. Debtor’s Schedules provide that Amos’ claim is entirely unsecured.
12. Debtor’s Chapter 13 Plan seeks to treat Amos’s claim as entirely unsecured.
13. Amos is the current holder and owner of a Promissory Note dated October 15, 2009 executed by Debtor (the “Note”), evidencing an indebtedness in the original principal sum of \$82,865.07. A true and correct copy of the Note is attached hereto as Exhibit A.
14. The Note is secured by a Mortgage dated May 27, 2005 and recorded in the office of the Lake County, Illinois Recorder of Deeds on July 20, 2005 as Document Number 5819123 (the “Mortgage”), which encumbers the Property. On June 5, 2018, the Mortgage was assigned to Amos pursuant to an Assignment of Mortgage. A true and correct copy of the Mortgage and Assignment is attached hereto as Exhibit B.
15. JPMorgan is the holder of a note dated February 2, 2005 executed by the Debtor in the original principal amount of \$150,000.00 (the “JPMorgan Note”).

16. The JPMorgan Note is secured by a Mortgage dated February 2, 2005 and recorded in the office of the Lake County, Illinois Recorder of Deeds on February 21, 2005 as Document Number 5737097 (the “JPMorgan Mortgage”), which encumbers the Property.
17. On or about March 24, 2015, Debtor entered into a modification agreement with JPMorgan (the “Modification”), which among other things, modified the principal balance due under the JPMorgan Note and JPMorgan Mortgage. The Modification was recorded in the Lake County, Illinois Recorder of Deeds on April 13, 2015.
18. On May 15, 2019, JPMorgan filed its Complaint to Foreclose Mortgage, seeking to foreclose the Mortgage (the “Foreclosure Complaint”). A true and correct copy of the Foreclosure Complaint is attached hereto as Exhibit C. The JPMorgan Mortgage, JPMorgan Note and Modification are attached to the Foreclosure Complaint as Exhibits A, B & C, respectively.

#### **DECLARATORY JUDGMENT**

19. The first paragraph of the JPMorgan Mortgage states “MAXIMUM LIEN. At no time shall the principal amount of Indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$150,000.00.”
20. At the time Amos’ Mortgage was recorded, the principal indebtedness secured by the JPMorgan Mortgage was limited to \$150,000.00.
21. By virtue of Debtor’s schedules, JPMorgan’s secured claim in the Bankruptcy Case is \$222,000.00.
22. According to JPMorgan’s Foreclosure Complaint, as of January 1, 2019, the outstanding principal balance on JPMorgan’s Mortgage totaled \$209,753.71.

23. Under the Illinois Conveyances Act, “mortgages and other instruments of writing which are authorized to be recorded shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors.” 765 ILCS 5/30.
24. The Modification did not take effect until after Amos’ Mortgage was recorded.
25. Amos’ Mortgage is inferior to JPMorgan’s Mortgage only to the extent of \$150,000 in principal indebtedness.
26. Although JPMorgan has not filed a claim, the Debtor has scheduled JPMorgan’s claim far in excess of the \$150,000 limitation, and notwithstanding Amos’ challenge to the Debtor’s valuation of the Property, Amos’ claim stands to be treated as wholly unsecured if not for the court’s determination of the extent of JPMorgan’s Mortgage lien.

WHEREFORE, Amos Financial, LLC prays that that this Court determine the validity, extent and priority of JPMorgan’s Mortgage, declare that Amos’ Mortgage is in second priority position behind JPMorgan only to the extent of \$150,000 in principal and for such other relief as the Court deems just.

By: /s/Noah Weininger

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Noah Weininger, IL ARDC #6280021

Attorney for Plaintiff

The Weininger Law Firm LLC  
111 West Washington Street, Suite 1240  
Chicago, Illinois 60602  
312-483-1028  
nweininger@weiningerlawfirm.com

**NOTICE:**

THIS LAW FIRM IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE